

Application No. 10/825,046
Amendment Dated December 12, 2005
Office Action mailed November 2, 2005

REMARKS/ARGUMENTS:

Claims 1-12 are pending of which claims 6-11 are withdrawn. Claim 5 is amended. Claim 12 is new -- its subject matter is based on that set forth in paragraph [0015] and as shown in Fig. 2 of the patent application.

Claim 5 was rejected under 35 USC 112 on the basis that there insufficient antecedent basis for the recitation of "the surgical handpiece". Claim 5 is now amended to change "the" in that phrase to "a" and thereby overcome this rejection. Withdrawal of the rejection is requested.

Claims 1-5 were rejected under 35 USC 102 (b) as being anticipated by Bailly et al (EP 0570255). The rejection is traversed.

Independent claim 1 recites in part: (bold added for emphasis)

a hollow extension tube **secured** to a distal end of the sterile, tubular sheath; and

.... the sterile, tubular sheath being **secured** to the aspiration tube at a location spaced from the distal end of the aspiration tube and being in the expanded condition.

Thus, the sterile, tubular sheath is **secured**, as recited, at its distal end to the hollow extension tube and further to the aspiration tube at a location spaced from this distal end.

Turning to Bailly, the Office Action points to the following in Bailly as counterparts to the recited claim language of claim 1:

Tubular cover 16 corresponds with the recited sterile, tubular sheath

Adaptor 8 corresponds with the recited hollow extension tube

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Conduit 4 corresponds with the recited aspiration tube

After doing so, however, there still lacks any counterpart to the recitation in claim 1 for the sterile, tubular sheath being secured to the aspiration tube.

Fig. 3 of Bailly shows tubular cover 16 integral at one end with adaptor 8, but there is no securement whatsoever between the tubular cover 16 and the conduit 4 or even with the joining piece 1. That is, there is no securement of the tubular cover 16 to conduit 4 at a location spaced from the distal end of the tubular cover 16 (where the tubular cover 16 is to be attached to the adaptor 8). Please refer to the abstract of Bailly that clearly states that one end of the tubular cover 16 is integral with the adaptor 8 but the other end is free:

"a tubular cover (16) whose one end is integral with said
adaptor (8) and whose other end is free ..."

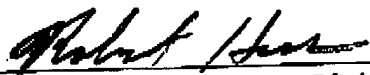
As such, the claim recitation is not met and thus the rejection for anticipation under 35 USC 102(b) warrants withdrawal. Further, leaving one end of the tubular cover 16 to remain free runs the risk of entry of contaminants via the free end. After all, the tubular cover 16 of Bailly is flexible and therefore susceptible to being inadvertently jostled while in use, thereby giving rise to the potential for contamination via the free end. Such a potential for contamination is avoided in accordance with the invention by securing the sheath to the aspiration tube. Bailly, therefore, neither anticipates nor renders obvious the subject matter recited in claims 1-5.

Withdrawal of the claim rejection is requested.

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